

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LONNIE ROGERS	:	
	:	NO. 1:07-CV-00456
Petitioner,	:	
	:	
	:	
v.	:	OPINION AND ORDER
	:	
	:	
ERNIE MOORE,	:	
	:	
Respondent.	:	

This matter is before the Court on the Report and Recommendation in which the assigned Magistrate Judge recommended that Petitioner's Petition for Writ of Habeas Corpus be denied (doc. 13). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety.

On June 11, 2007, pro se Petitioner Lonnie Rogers, an inmate at the Warren Correctional Institution in Lebanon, Ohio, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Id.). Petitioner pled three grounds for relief: (1) "Petitioner's sentences are void as violating the 14th Amendment's due process provision as being ex post facto;" (2) "Denial of effective assistance of trial counsel;" and (3) "Right to procedural due process denied where sentence for all allied offense" (doc. 1).

In the Report and Recommendation, the Magistrate Judge considered each of Petitioner's arguments, and found each to be

without merit (doc. 13). First, the Magistrate Judge considered Petitioner's first ground for relief, in which he apparently alleges the application of the Ohio Supreme Court's decision in State v. Foster, 109 Ohio St.3d 1, 845 N.E.2d 470 (2006), to his case violates the Ex Post Facto Clause(Id.). The Magistrate Judge found that because Petitioner was sentenced before Foster was decided, Foster has no application to this case, and therefore, Petitioner's first ground for relief is without merit (Id.).

Next, the Magistrate Judge considered the basis for Petitioner's second and third grounds for relief, that Petitioner impermissibly received duplicative sentences for allied offenses of similar import, to wit, aggravated robbery and burglary (Id.). The Magistrate Judge concluded these grounds for relief are "without merit because petitioner's robbery convictions and burglary convictions are not allied offenses of similar import, but involve separate dates, as well as separate victims" and therefore "it would not have been reasonable to expect petitioner's trial counsel to object to his sentence on this basis" (Id., citing Strickland v. Washington, 466 U.S. 668 (1984)). The Court, having fully considered this matter, finds the Magistrate Judge's Report and Recommendation well-reasoned, thorough, and correct.

The parties were served with the Report and Recommendation and were therefore afforded proper notice of the Magistrate Judge's Report and Recommendation required by 28 U.S.C.

§ 636(b)(1)(C), including that failure to file timely objections to the Report and Recommendation would result in a waiver of further appeal. See United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Neither party filed any objections thereto within the ten days provided for by Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1)(C).

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636(b), the COURT ADOPTS the Magistrate Judge's Report and Recommendation (doc. 13) in its entirety, and therefore DENIES Petitioner's writ of habeas corpus (doc. 3). Because Petitioner has failed to make a substantial showing of the denial of a constitutional right based on his claims, the Court DOES NOT issue a certificate of appealability in this case. See 28 U.S.C. § 2253(C); Fed. R. App. P. 22(b). Finally, the Court CERTIFIES, pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Order would not be taken in "good faith" and therefore DENIES Petitioner leave to appeal in forma pauperis upon a showing of financial necessity.

SO ORDERED.

Dated: July 1, 2008

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge